

Comments on the Bioterrorism Act of the USA

With reference to the Bioterrorism Act that was ratified on 12/6/2002 (signed by President George Bush), the following are the Egyptian comments with regards to the Act:

- ?? The Bioterrorism Act has provisions with potentially significant consequences for existing trade patterns and, therefore, should have been notified in accordance with Article 7 of the SPS Agreement to the SPS Secretariat.
- ?? The USA has to take certain measures to limit unnecessary obstacles to trade resulting from the adoption of the Bioterrorism Act.
- ?? With reference to Section 302 (Protection against adulteration of food), it is likely that the increased number of inspections at border posts on account of bioterrorism will affect the importation of goods into the USA and the related costs.
- ?? As for Section 303 (Administrative detention), in the event that a regular and risk-free consignment would become unusable or lose value, due to the imposed import checking procedures, rules for indemnification and compensation respectively in accordance with the customary trade law should be foreseen.
- ?? The term “credible evidence” is considered too vague. Clearer criteria are needed to define when a consignment should be refused import on grounds of Bioterrorism.
- ?? Consideration should be given by the USA authorities, in the adoption procedure of the final regulation to lay down rules for the rights of appeal against decisions by the competent authorities including urgent appeal procedures.
- ?? The specific period of detention is an important issue. Of particular concern is the impact it can have on the normal flow of trade of FDA regulated products, especially perishables. Therefore, for perishable products we would like to suggest a maximum period of detention of 24 hours.
- ?? Please specify the notification procedures that exporters follow in case of not using any agents inside USA.
- ?? Please indicate whether the overall burden of requirements on companies exporting to the US are more or less onerous than on firms within the US producing for their domestic market.
- ?? How does the USA propose to deal with the practical aspects of the registration of the foreign facilities? For instance, how long will it take to get a registration number and are packaging firms considered to be facilities in this Act ?
- ?? Please specify if every firm has to request registration directly (it seems that this is the case from the text) and if information required must only be submitted by the registering firm.
- ?? Have the practical aspects of “maintenance of records” in foreign facilities been considered ? How do the USA authorities plan to access records kept by facilities in other countries to ensure compliance ?

- ?? Concerns have been expressed that the foreseen pre-notification procedure will generate administrative, logistic and economic burdens.
- ?? Regarding the practical aspects of the notification before importation of goods into the U.S., please indicate who should be notified. Can existing notification and paperwork that is sent to and through customs be used? This point is particularly important. A large amount of information is already required for entry through USA customs. Is it the intention to request all exporters to submit an additional set of documents to conform to the Bioterrorism Act in addition to documentation for existing animal health and trade legislation ? Could the existing documentation be used for the additional purposes set out in the new Act ?
- ?? As for Section 308 (Authority to mark articles refused admission into United States), the planned marking of consignments whose entry has been refused should be limited to those batches presenting serious health risks.
- ?? Section 310 (Notices to States regarding imported food), the USA authorities should notify the public health structures within other countries of their findings concerning health threats resulting from imported food in order to allow them to take protective measures.
- ?? According to Article 3.3 of the SPS Agreement, please specify the scientific justification and the risk assessment procedures that the United States implemented when issuing this act.
 In case of the absence of reliable information, please indicate the amount of relevant pertinent information that the United States takes into consideration when issuing this Act.
- ?? On the other hand, did the United States take into account Article 1b of the GATT 1947 that states that every country has the rights to set the procedures to protect its national security in terms of access of goods and products?
- ?? Article 2.3 of the Uruguay Agreement states that:
- ?? “Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between members where identical or similar conditions prevail, including their own territory and that of other members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute disguised restrictions on international trade.” Therefore we believe that the Bioterrorism Act represents an obstacle to international trade between the United States and the other nations.
- ?? Annex B paragraph 2 of the SPS Agreement states that:
- ?? “Except in urgent circumstances, members shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting members, and particularly in developing country members, to adapt their products and methods of production to the requirements of the importing member.”

- ?? On the other hand the Bioterrorism Act states that the final and proposed regulations will enter into force after 18 months from the date of enactment. We believe that this interval of time is not sufficient for the producers in the exporting countries to adapt their products to the requirements of the Act.
- ?? Moreover, the Act allows two months for the process of registration of food facilities starting from the date of enactment . This period of time is considered to be a limited period of time for the registration process.
- ?? As for the proposed regulation, which states that any registration application sent before 12/10/2003 will not be accepted, this is considered to be an arbitrary regulation.
- ?? Furthermore, the proposed regulation of prior notice of imported food shipments provides that prior notice may not be submitted more than 5 days before arrival at US. Port. This is considered to be an arbitrary measure in light of the fact that the developing countries don't have advanced means of notifications.